



served through its registered agent, Daniel C. Miller, at 1156 Point Vista Road, Hickory Creek, Texas 75065.

3. Upon information and belief, Defendant ABSNP, LLC is a corporation organized under the laws of the State of Texas having a principal place of business at 1156 Point Vista Road, Hickory Creek, Texas 75065. ABSNP, LLC may be served through its registered agent, Kevin D. Harrison, 1156 Point Vista Road, Hickory Creek, Texas 75065.

4. Upon information and belief, Defendant Miller is an individual residing in Texas at 1156 Point Vista Road, Hickory Creek, Texas 75065, where he may also be served with process.

#### **JURISDICTION AND VENUE**

5. The United States District Court for the Northern District of Texas has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 in that this matter is a civil action arising under the Constitution, laws, or treaties of the United States. This action involves federal trademark rights, federal Lanham Act violations, and other federal causes of action.

6. This Court also has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1332 in that this matter is a civil action between citizens of different states wherein the amount in controversy is believed to exceed the sum of \$75,000, exclusive of interest and cost. Plaintiff ABSNP is a District of Columbia corporation with its principal place of business in Washington, D.C. Defendant KIDS, Inc. is a corporation registered in Ohio and based in Texas. Defendants ABSNP, LLC and Miller are residents of the State of Texas and/or are doing business in Texas, including this Judicial District, and have systematic and continuous contacts with the State of Texas.

### **FACTUAL BACKGROUND**

7. ABSNP was incorporated in Washington, D.C. in 1999. ABSNP is the owner of the common law trademark “American Board of School Neuropsychology” for use with its business of training and certifying diplomates in the discipline of school neuropsychology. ABSNP has exclusively used the common laws trademarks American Board of School Neuropsychology for many years, and the consuming public has come to associate correspondence, testing and certification materials bearing or displaying the trademark American Board of School Neuropsychology as originating from ABSNP.

8. The trademark triangle logo with an open book and the Greek letter psi (the “Logo”) is associated exclusively with ABSNP for use in testing materials, marketing, and other materials related to its operations in certifying diplomates in school neuropsychology. ABSNP has used the Logo in interstate commerce continuously from 1999 to 2011, when ABSNP, LLC, exclusively owned by Miller and KIDS, Inc., began impersonating ABSNP wholesale. As a result of ABSNP’s marketing of its materials and the extensive advertising and other business generation efforts to promote the Logo, the Logo has become well-known in the psychology community in the State of Texas and the United States as identifying ABSNP’s materials and business. Diplomates, potential diplomates, and professionals in the area have come to identify the Logo as originating with ABSNP. Consequently, ABSNP has developed substantial recognition among its consuming public for its materials bearing the Logo and has acquired and enjoys a valuable reputation and significant goodwill associated with its triangle-psi Logo.

9. ABSNP operated from 1999 to 2011 as the exclusive user of these marks and the Logo. But in 2011, Miller incorporated ABSNP, LLC, a company adopting the same name and corporate identity as ABSNP, and appointed KIDS, Inc. its sole member. Upon information and

belief, Miller intentionally performed all actions alleged in this Complaint together and through his wholly-owned corporation KIDS, Inc., which is now the sole member of ABSNP, LLC.

10. ABSNP, LLC was not only created by KIDS, Inc. and/or Miller to compete with ABSNP but also *to assume its very existence*, completely assuming the duties and operations of ABSNP. Dr. Phil De Fina, a shareholder of the real ABSNP, never consented to this action and was not aware of the existence of ABSNP, LLC until March of 2012.

11. Since February 2011, ABSNP, LLC has fraudulently operated as ABSNP, assuming its name, its trademarks, and the Logo on its website ([www.absnp.com](http://www.absnp.com)), causing confusion and total deception of the marketplace. Every correspondence or materials produced under the ABSNP name since February of 2011 has not been produced or sent by ABSNP, the rightful owner of these marks, but rather ABSNP, LLC, a Texas limited liability company masquerading as the true ABSNP. These actions are not only likely to cause confusion as to the source of these testing and certification materials but are guaranteed to cause such confusion.

12. Until the formation of ABSNP, LLC, ABSNP's use of the Logo in the certification of school neuropsychologists was exclusive. As a result of this exclusive use of the Logo and the long and widespread use that has been made by ABSNP of the Logo, there is substantial recognition and association of the Logo with ABSNP by the consuming public for certification of school neuropsychologists.

13. Given the fact that Defendants are masquerading as ABSNP and thus all correspondence, testing materials, and certification materials are substantively or precisely identical to ABSNP's Logo and marks, and Defendants' inclusion of ABSNP's marks on Defendants' website, there is a substantial likelihood (indeed, a virtual guarantee) that consumers

will be confused, misled or deceived. Moreover, Defendants' improper use of ABSNP's marks and Logo creates a false association with Defendants' materials and corporate identity.

14. Additionally, Defendants' use of ABSNP's marks fails to inform the consuming public that the American Board of School Neuropsychology mark and the ABSNP logo are marks of ABSNP.

15. By virtue of his status as a shareholder and officer in ABSNP, on information and belief Defendant Miller - by, through and together with his two wholly owned companies, KIDS, Inc. and ABSNP, LLC - are well aware of ABSNP's valuable trademark rights to the marks American Board of School Neuropsychology and the Logo. In fact, Defendants are purposefully using ABSNP's trademarks to sell Defendants' materials and to masquerade as ABSNP, LLC. Therefore, Defendants have knowingly undertaken the above-described activities resulting in an infringement of ABSNP's marks. Thus, on information and belief, the above-described activities by Defendants have been willful.

16. On information and belief, Defendants will continue to undertake such activities which infringe ABSNP's mark unless enjoined by the Court.

17. As a consequence of these activities and the impairment to ABSNP's goodwill, reputation, and customer base, ABSNP has been irreparably harmed to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Defendants are immediately and, after trial, permanently enjoined by this Court from committing further such activity.

**COUNT I - TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION UNDER THE LANHAM ACT**

18. ABSNP repeats and realleges the allegations set forth in paragraphs 1-19.

19. Defendants' improper use of, and sale of materials under, a mark confusingly similar (indeed, identical) to ABSNP's American Board of School Neuropsychology mark, as well as Defendants' use of the Logo on its website, is confusing to consumers and constitutes infringement of ABSNP's trademark rights in violation of the Lanham Trademark Act ("Lanham Act"). Defendants' unauthorized use of ABSNP's marks American Board of School Neuropsychology and the Logo violates Section 43 of the Lanham Act which prohibits the use of a trademark in such a manner as is likely to cause confusion as to the source of the goods bearing the trademarks as well as confusion as to the sponsorship or affiliation of the goods bearing the trademarks. *See* 15 U.S.C. § 1125.

20. Upon information and belief, Defendants are currently selling Defendants' testing and certification materials under their infringing mark(s) and will continue to do so unless enjoined from doing so by this Court. If ABSNP has no way of controlling the quality of Defendants' materials and Defendants are allowed to continue to sell Defendants' Products under an infringing mark, ABSNP's goodwill created by its marks American Board of School Neuropsychology and the Logo is placed in jeopardy. The continuing acts of Defendants are jeopardizing the goodwill of ABSNP and its valuable trademarks, and such acts have caused and are causing irreparable injury to ABSNP and to the consuming public. Unless the acts of the Defendants complained of herein are enjoined by this Court, they will continue to cause irreparable injury to ABSNP and to the public, for which there is no adequate remedy at law. Accordingly, ABSNP seeks injunctive relief prohibiting the infringing acts by Defendants complained of herein.

21. Defendants individually and collectively undertook actions to infringe on ABSNP's rightful trademarks. These actions were intentional.

22. Additionally or in the alternative, ABSNP seeks an accounting and its actual and consequential damages resulting from Defendants' infringing acts. Moreover, ABSNP seeks punitive, additional, and enhanced damages from Defendants.

**COUNT II - TRADEMARK INFRINGEMENT AND  
UNFAIR COMPETITION UNDER TEXAS LAW**

23. ABSNP repeats and realleges the allegations set forth in paragraphs 1-23.

24. The acts of Defendants complained of above constitute trademark infringement and unfair competition under the common law of the State of Texas. As a result of the infringement and unfair competition by Defendants, ABSNP has suffered and will continue to suffer injury and damage in an amount yet to be determined. Upon information and belief, the acts of infringement by Defendants have resulted in substantial unjust profits and unjust enrichment on the part of Defendants in an amount yet to be determined. Such acts of trademark infringement and unfair competition are causing harm to ABSNP.

25. The continuing acts of Defendants are jeopardizing the goodwill of ABSNP and its valuable trademarks, and such acts have caused and will continue to cause irreparable injury to ABSNP and to the consuming public. Unless the acts of the Defendants complained of herein are enjoined by this Court, they will continue to cause irreparable injury to ABSNP and to the public, for which there is no adequate remedy at law. Additionally or in the alternative, ABSNP seeks an accounting and its actual and consequential damages as a result of Defendants' infringing acts which have resulted in confusion among the public. Moreover, ABSNP seeks punitive and enhanced damages for Defendants' willful conduct.

**COUNT IV - REQUEST FOR MONETARY RELIEF,  
TREBLE DAMAGES AND ATTORNEYS' FEES AND COSTS**

26. ABSNP repeats and realleges the allegations set forth in paragraphs 1-26.

27. The acts of Defendants complained of above have resulted in trademark infringement and unfair competition. Accordingly, Pursuant to 15 U.S.C. § 1117(a), ABSNP is entitled to recover 1) Defendants' profits; 2) any damages sustained as a result of Defendants' infringing acts; and 3) the costs associated with these causes of action.

28. Moreover, ABSNP is entitled to an award of treble damages, as well as an award of punitive damages, pursuant to 15 U.S.C. § 1117(b) as a result of the extenuating circumstances of this case, Defendants' intentional use of ABSNP's trademarks, and its gross, wanton, or willful conduct.

29. Furthermore, as a result of Defendants' actions, ABSNP has been required to retain the services of counsel to represent it in this matter, and it has been forced to incur and is presently incurring attorneys' fees in order to enforce its trademark rights. These fees and expenses are necessary and reasonable in order to prosecute this matter. Accordingly, ABSNP requests that it be granted an award of attorneys' fees and costs as a result of Defendants' actions.

#### **DEMAND FOR JURY TRIAL**

30. ABSNP demands a trial by jury on all claims and issues.

#### **CONCLUSION AND PRAYER**

31. WHEREFORE, American Board of School Neuropsychology, Inc. prays for entry of judgment:

- a. finding that Defendants have infringed American Board of School Neuropsychology, Inc.'s common law trademark rights in the marks American Board of School Neuropsychology;
- b. finding that Defendants have falsely and intentionally mislead consumers by directly or indirectly representing that infringing materials are endorsed by, sponsored by, or affiliated with American Board of School Neuropsychology, Inc.;



- c. finding that Defendants have engaged in unfair competition;
- d. enjoining Defendants, their officers, directors, agents, employees, representatives, successors, assigns, if any, and those in privity or concert with them from further acts that would amount to infringement of American Board of School Neuropsychology, Inc.'s common law trademark rights in the trademarks American Board of School Neuropsychology and the Logo, or unfair competition;
- e. awarding American Board of School Neuropsychology, Inc. all damages caused by the acts of Defendants and all profits of Defendants from acts complained of, and/or all costs to American Board of School Neuropsychology, Inc. caused by Defendants' activities complained of herein;
- f. trebling the damages and profits awarded to American Board of School Neuropsychology, Inc. as authorized by 15 U.S.C. § 1117;
- g. granting American Board of School Neuropsychology, Inc. pre-judgment and post-judgment interest on the damages caused to American Board of School Neuropsychology, Inc. by reasons of Defendants' activities complained of herein at the highest rates allowed by law;
- h. finding that this is an exceptional case and awarding American Board of School Neuropsychology, Inc. its reasonable and necessary attorneys' fees in accordance with 15 U.S.C. § 1117;
- i. awarding costs to American Board of School Neuropsychology, Inc.; and
- j. awarding American Board of School Neuropsychology, Inc. such other and further relief, at law or in equity, as the Court may deem just and proper under the circumstances.

Respectfully submitted,

/Joseph F. Coniglio/

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